CONTRACT CLAUSES

1. Fly America Requirements

The Agency agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that recipients and subrecipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S. Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Agency shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Agency agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

2. Buy America Requirements

The Agency agrees to comply with 49 U.S.C. 5323(j) and 49 CFR Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR 661.7, and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, microcomputer equipment, software, and small purchases (currently less than $100,000) made with capital, operating, or planning funds. Separate requirements for rolling stock are set out at 5323(j)(2)(C) and 49 CFR 661.11. Rolling stock not subject to a general waiver must be manufactured in the United States and have a 60 percent domestic content.

An Agency must submit to the FTA recipient the appropriate Buy America certification with all FTA-funded contracts, except those subject to a general waiver. Contracts that are not accompanied by a completed Buy America certification must be rejected as nonresponsive.

3. Energy Conservation Requirements 42 U.S.C. 6321 et seq./ 49 CFR Part 18

The Agency agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

4. Clean Water Requirements 33 U.S.C. 1251

(1) The Agency agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The Agency agrees to report each violation to the Department and understands and agrees that the Department will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(2) The Agency agrees to include these requirements in each subcontract exceeding $100,000 financed in whole or in part with Federal assistance provided by FTA.

5. **Access to Records** 49 U.S.C. 5325/ 18 CFR 18.36/ 49 CFR 633.17
The following access to records requirements apply to this Contract:

(1) Where the Agency is not a State but a local government and is the FTA Recipient or a subagency of the FTA Recipient in accordance with 49 CFR 18.36(I), the Agency agrees to provide the Department, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Agency which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.

(2) Where the Agency enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other nonprofit organization and is the FTA Recipient or a subrecipient of the FTA Recipient in accordance with 49 CFR 19.48, Agency agrees to provide the Purchaser, FTA Administrator, the Comptroller General of the United States or any of their duly authorized representatives with access to any books, documents, papers and records of the Agency which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.

(3) The Agency agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

(4) The Agency agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case the Agency agrees to maintain same until the Department, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(I)(11).

6. **Federal Changes** 49 CFR Part 18
The Agency shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Annual Master Agreement (Form FTA MA) between Department and FTA, as they may be amended or promulgated from time to time during the term of this contract. The Agency's failure to comply shall constitute a material breach of this contract.

7. **Clean Air** 42 U.S.C. 7401 et seq/ 40 CFR 15.61/ 49 CFR Part 18
(1) The Agency agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The Agency agrees to report each violation to the Department and understands and agrees that the Department will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
(2) The Agency also agrees to include these requirements in each subcontract exceeding $100,000 financed in whole or in part with Federal assistance provided by FTA.

8. **Recycled Products** 42 U.S.C. 6962/ 40 CFR Part 247/ Executive Order 12873
The Agency agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

9. **Program Fraud and False or Fraudulent Statements or Related Acts** 31 U.S.C. 3801 et seq/ 49 CFR Part 31/ 18 U.S.C. 1001/ 49 U.S.C. 5307

(1) The Agency acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §§3801 et seq. and U.S. Dot regulations, "Program Fraud Civil Remedies," 49 CFR Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Agency certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Agency further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Agency to the extent the Federal Government deems appropriate.

(2) The Agency also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. §5307, the Government reserves the right to impose the penalties of 18 U.S.C. §1001 and 49 U.S.C. §5307(n)(1) on the Agency, to the extent the Federal Government deems appropriate.

(3) The Agency agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subagencies who will be subject to the provisions.

10. **Termination** 49 U.S.C. Part 18/ FTA Circular 4220.1E

a. Termination for Convenience (General Provision) The Department may terminate this contract, in whole or in part, at any time by written notice to the Agency when it is in the Government's best interest. The Agency shall be paid its costs, including contract closeout costs, and profit on work performed up to the time of termination. The Agency shall promptly submit its termination claim to the Department to be paid to the Agency. If the Agency has a property in its possession belonging to the Department, the Agency will account for the same, and dispose of it in the manner the Department directs.

b. Termination for Default [Breach or Clause] (General Provision) If the Agency does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, the Agency fails to perform in the manner called for in the contract, or if the

Agency fails to comply with any other provisions of the contract, the Department may terminate this contract for default. Termination shall be effected by serving a notice of termination on the Agency setting forth the manner in which the Agency is in default. The Agency will only be paid the contact price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract. If it is later determined by the Department that the Agency had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Agency, the Department, after setting up a new delivery of performance schedule, may allow the Agency to continue work, or treat the termination as a termination for convenience.

c. Opportunity to Cure (General Provision) The Department in its sole discretion may, in the case of a termination for breach or default, allow the Agency thirty (30) days in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions.
If the Agency fails to remedy to the Department's satisfaction the breach or default or any of the terms, covenants, or conditions of this Contract within thirty (30) days after receipt by Agency or written notice from the Department setting forth the nature of said breach or default, the Department shall have the right to terminate the Contract without any further obligation to the Agency. Any such termination for default shall not in any way operate to preclude the Department from also pursuing all available remedies against the Agency and its sureties for said breach or default.

d. Waiver of Remedies for any Breach In the event that the Department elects to waive its remedies for any breach by Agency of any covenant, term or condition of this Contract, such waiver by the Department shall not limit the Department's remedies for any succeeding breach of that or of any other term, covenant, or condition of the Contract.

e. Termination for Convenience (Professional or Transit Service Contracts) The Department, by written notice, may terminate this contract, in whole or in part, when it is in the Government's interest. If this contract is terminated, the Department shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

f. Termination for Default (Supplies and Services) If the Agency fails to deliver supplies or to perform the services within the time specified in this contract or any extension or if the Agency fails to comply with any other provisions of this contract, the Department may terminate this contract for default. The Department shall terminate by delivering to the Agency a Notice of Termination specifying the nature of the default. The Agency will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract.
If, after termination for failure to fulfill contact obligations, it is determined that the Agency was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Department.

g. Termination for Default (Transportation Services) If the Agency fails to pick up the

commodities or to perform the services, including delivery services, within the time specified in this contract or any extension or if the Agency fails to comply with any other provisions of this contract, the Department may terminate this contract for default. The Department shall terminate by delivering to the Agency a Notice of Termination specifying the nature of default.

The Agency will only be paid the contract price for services performed in accordance with the manner of performance set forth in this contract.

If this contract is terminated while the Agency has possession of Recipient goods, the Agency shall, upon direction of the Department, protect and preserve the goods until surrendered to the Department or its agent. The Agency and the Department shall agree on payment for the preservation and protection of goods. Failure to agree on an amount will be resolved under the Dispute clause.

If, after termination for failure to fulfill contract obligations, it is determined that the Agency was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Department.

11. <u>Governmentwide Debarment and Suspension</u>

The recipient agrees to comply with the requirements of Executive Orders Nos. 12549 and 12689, "Debarment and Suspension," 31 U.S.C. § 6101 note, and U.S. DOT regulations on Debarment and Suspension at 49 CFR Part 29.

(1) The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the Agency knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, The Department may pursue available remedies, including suspension and/or debarment.

(2) The Agency shall provide immediate written notice to the Department if at any time the Agency learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

(3) The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "persons," "principle," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549 [49 CFR Part 29]. You may contact the Department for assistance in obtaining a copy of those regulations.

(4) The Agency agrees by signing this certification that it shall not knowingly enter into any covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized in writing by the Department.

(5) **The Agency further agrees by signing this certification that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion", without modification, in all covered transactions and in all solicitations for covered transactions.**

(6) A participant in a covered transaction may rely upon a certification of a prospective participant in a covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous.
A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List issued by U.S. General Service Administration.

(7) Nothing contained in the foregoing shall be construed to require establishment of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

(8) Except for transactions authorized under Paragraph 4, if a participant in a covered transaction knowingly enters into a covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to all remedies available to the Federal Government, the Department may pursue available remedies including suspension and/or debarment.

12. **Privacy Act Requirements** 5 U.S.C. 552
The following requirements apply to the Agency and its employees that administer any system of records on behalf of the Federal Government under any contract:

(1) The Agency agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the Agency agrees to obtain the express consent of the Federal Government before the Agency or its employees operate a system of records on behalf of the Federal Government. The Agency understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

(2) The Agency also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government finance in whole or in part with Federal assistance provided by FTA.

13. **Civil Right Requirements** 29 U.S.C. 623/ 42 U.S.C. 2000/ 42 U.S.C. 6102/ 42 U.S.C. 12112/ 42 U.S.C. 12132/ 49 U.S.C. 5332/ 29 CFR Part 1630/ 41 CFR Parts 60 *et seq.*
The following requirements apply to the underlying contract:

(1) Nondiscrimination. In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal Transit law at 49 U.S.C. § 5332, the Agency agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Agency agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

(2) Equal Employment Opportunity. The following equal employment opportunity requirements apply to the underlying contract:

(a) Race, Color, Creed, National Origin, Sex. In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 5332, the Agency agrees to comply with all applicable equal opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 CFR Parts 60 *et seq.*, (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Agency agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Agency agrees to comply with any implementing requirements FTA may issue.

(b) Age. In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. §§ 623 and Federal transit law at 49 U.S.C. § 5332, the Agency agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Agency agrees to comply with any implementing requirements FTA may issue.

(c) Disabilities. In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Agency agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 CFR Part 1630, pertaining to employment of persons with disabilities. In addition, the Agency agrees to comply with any implementing requirements FTA may issue.

(3) The Agency also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

14. Breaches and Dispute Resolution 49 CFR Part 18/ FTA Circular 4220.1E

Disputes. Disputes arising in the performance of this contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of the Department. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, the Agency mails or otherwise furnishes a written appeal to the Department. In connection with any such appeal, the Agency shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the Department shall be binding upon the Agency and the Agency shall abide by the decision.

Performance During Dispute. Unless otherwise directed by the Department, the Agency shall continue performance under this contract while matters in dispute are being resolved.

Claims for Damages. Should either party to the contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts it is legally liable, a claim for damages therefore shall be made in writing to such other party within a reasonable time after the first observance of such injury of damage.

Remedies. Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the Department and the Agency arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which the Department is located.

Rights and Remedies. The duties and obligations imposed by the contract and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the Department or Agency shall constitute a waiver of any right or duty afforded any of them under the contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

15. Transit Employee Protective Agreements

(1) The Agency agrees to comply with the applicable transit employee protective requirements as follows:

(a) General Transit Employee Protective Requirements - To the extent that FTA determines that transit operations are involved, the Agency agrees to carry out the transit operations work on the underlying contract in compliance with terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees employed under this contract and to meet the employee protective requirements of 49 U.S.C. A 5333(b), and U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the letter of certification from the U.S. DOL to FTA applicable to the FTA Recipient's project from which Federal assistance is provided to support work on the underlying contract. The Agency agrees to carry out that work in compliance with the conditions stated in that U.S. DOL letter. The requirements of this subsection (1), however, do not apply to any contract financed with Federal assistance provided by FTA either for projects for elderly individuals and individuals with disabilities authorized by 49 U.S.C. §§ 5310(a)(2), or for projects for nonurbanized areas authorized by 49 U.S.C. §§ 5311. Alternate provisions for those projects are set forth in subsections (b) and (c) of this clause.

(b) Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C.

§§ 5310(a)(2) for Elderly Individuals and Individuals with Disabilities - If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. §§ 5310(a)(2), and if the U.S. Secretary of Transportation has determined or determines in the future that the employee protective requirements of 49 U.S.C. §§ 5333(b) are necessary or appropriate for the state and the public body subrecipient for which work is performed on the underlying contract, the Agency agrees to carry out the Project in compliance with the terms and conditions determined by the U.S. Secretary of Labor to meet the requirements of 49 U.S.C. §§ 5333(b), U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the U.S. DOL's letter of certification to FTA, the date of which is set forth Grant Agreement or Cooperative Agreement with the state. The Agency agrees to perform transit operations in connection with the underlying contract in compliance with the conditions stated in that U.S. DOL letter.

(c) Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C.

§§ 5311 in Nonurbanized Areas - If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. §§ 5311, the Agency agrees to comply with the terms and conditions of the Special Warranty for the Nonurbanized Area Program agreed to by the U.S. Secretaries of Transportation and Labor, dated May 31, 1979, and the procedures implemented by U.S. DOL or any revision thereto.

(2) The Agency also agrees to include the any applicable requirements in each subcontract involving transit operations financed in whole or in part with Federal assistance provided by FTA.

16. Disadvantaged Business Enterprise (DBE) Provision 49 CFR Part 23

(1) The Federal fiscal year goal has been set by the Department in an attempt to match projected procurements with available qualified disadvantaged businesses. The Department's goals for budgeted service contracts, bus parts, and other material and supplies for Disadvantaged Business Enterprises have been established by the Department as set forth by the U.S. Department of Transportation Regulations 49 CFR Part 23, March 31, 1980, and amended by Section 106(c) of the Surface Transportation Assistance Act of 1987, and is considered pertinent to any contract resulting from this request for proposal.
If a specific DBE goal is assigned to this contract, it will be clearly stated and if the Agency is found to have failed to exert sufficient, reasonable, and good faith efforts to involve DBE's in the work provided, the Department may declare the Agency noncompliant and in breach of contract. If a goal is not stated, it will be understood that no specific goal is assigned to this contract.
(a) Policy It is policy of the U.S. Department of Transportation and the Department that Disadvantaged Business Enterprise, as defined in 49 CFR Part 23, and as amended in Section 106© of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (STURAA), shall have the maximum opportunity to participate in the performance of contract financed in whole or in part with federal funds under this Agreement. Consequently, the DBE requirements of 49 CFR Part 23 and Section 106(c) of the STURAA of 1987, apply to this contract.

The Agency agrees to ensure that DBEs as defined in 49 CFR Part 23 and section 106(c) of the STURAA of 1987, have the maximum opportunity to participate in the whole or in part with federal funds provided under this Agreement. In this regard, the Agency shall take all necessary and reasonable steps in accordance with the regulations to ensure that DBEs have the maximum opportunity to compete for and perform subcontracts. The Agency shall not discriminate on the basis of race, color, national origin, religion, sex, age or physical disability in the award and performance of subcontracts.

It is further the policy of the Department to promote the development and increase the participation of businesses owned and controlled by disadvantaged. DBE involvement in all phases of the Department procurement activities are encouraged.

(b) DBE obligation The Agency and its subcontractors agree to ensure that disadvantaged businesses have the maximum opportunity to participate in the performance of contacts and subcontract financed in whole or in part with federal funds provided under the Agreement. In that regard, all Agencies and subcontractors shall take all necessary and reasonable steps in accordance with 49 CFR Part 23 as amended, to ensure that minority business enterprises have the maximum opportunity to compete for and perform contracts.

(c) Where the Agency is found to have failed to exert sufficient reasonable and good faith efforts to involve DBE's in the work provided, the Department may declare the Agency noncompliant and in breach of contract.

(d) The Agency will keep records and documents for reasonable time following performance of this contract to indicate compliance with the Department DBE program. These records and documents will be made available at reasonable times and places for inspection by any authorized representative of the Department and will be submitted to the Department upon request.

(e) The Department will provide affirmative assistance as may be reasonable and necessary to assist the prime Agency in implementing their programs for DBE participation.

The assistance may include the following upon request:

- Identification of qualified DBE
- Available listing of Minority Assistance Agencies
- Holding bid conferences to emphasize requirements

2 DBE Program Definitions, as used in the contract:

(a) Disadvantaged business "means a small business concern":

I. Which is at least 51 percent owned by one or more socially and economically disadvantaged individuals, or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more socially and economically disadvantaged individuals; and

ii. Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

iii. Which is at least 51 percent owned by one or more women individuals, or in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women individuals; and

iv. Whose management and daily business operations are controlled by one or more women individuals who own it.

(b) "Small business concern" means a small business as defined by Section 3 of the Small Business Act and Appendix B - (Section 106(c)) Determinations of Business Size.

(c) "Socially and economically disadvantaged individuals" means those individuals who are citizens of the United States (or lawfully admitted permanent residents) and States (or lawfully admitted permanent residents) and who are Black Americans, Hispanic Americans, Native Americans, Asian-Pacific American, Asian-Indian Americans, or women, and any other minorities or individuals found to be disadvantaged by the Small Business Administration pursuant to section 8(a) of the Small Business Act.

I. "Black Americans", which includes persons having origins in any of the Black racial groups of Africa;

ii. "Hispanic Americans", which includes persons of Mexican, Puerto Rican, Cuba, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;

iii. "Native Americans", which includes persons who are American Indians, Eskimos, Aleut, or Native Hawaiians;

iv. "Asian-Pacific Americans", which includes persons whose origins are from Japan, China, Taiwan, Korea Vietnam, Laos, Cambodia, the Philippines, Samoa, Guam, the U.S. Trust Territories of Pacific, and the Northern Marianas;

v. "Asian-Indian American", which includes persons whose origins are from India, Pakistan, and Bangladesh.

17. State and Local Law Disclaimer

The use of many of the suggested clauses are not governed by Federal law, but are significantly affected by State law. The language of the suggested clauses may need to be modified depending on state law, and that before the suggested clauses are used in the grantees procurement documents, the grantees should consult with their local attorney.

18. Incorporation of Federal Transit Administration (FTA) Terms FTA Circular 4220.1E

The preceding provisions include, in part, certain Standard Terms and Conditions required by the U.S. DOT, whether or not expressly set forth in the preceding contact provisions.

All contractual provisions required by the U.S. DOT, as set forth in FTA Circular 4220.1E, dated June 19, 2003, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Agency shall not perform any act, fail to perform any act, or refuse to comply with any of the Department requests which would cause the Department to be in violation of the FTA terms and conditions.

19. No Government Obligation to Third Parties

(1) The Agency acknowledges and agrees that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Agency, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

(2) The Agency agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

20. **Cargo Preference Requirements** 46 U.S.C. 1241/ 46 CFR Part 381

The Agency agrees:

a. to use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels;

b. to furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of leading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA recipient (through the contractor in the case of a subcontractor's bill-of-lading.)

c. to include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities of ocean vessel.

21. **Contract Work Hours and Safety Standards Act** 40 U.S.C. §§ 327-333 (1995)/ 29 CFR § 5 (1995)/ 29 CFR § 1926 (1995)

(1) **Overtime requirements**. No contractor or subcontractor for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) **Violation; liability for unpaid wages; liquidated damages**. In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of $10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of overtime wages required by the clause set forth in paragraph (1) of this section.

(3) **Withholding for unpaid wages and liquidated damages**. The Department shall be upon its own action or upon written request of an authorized representative of the U. S. Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other

Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

(4) **Subcontracts**. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in this section and also a clause requiring the subcontractors to include these clauses in any subcontracts. The prime contractor shall be responsible for compliance by any subcontractor with the clauses set forth in this section.

(5) **Payrolls and basic records**. (a) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid.

Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

Section 107 (OSHA):

(This section is applicable to construction contracts only)

Contract Work Hours and Safety Standards Act. (i) The Contractor agrees to comply with section 107 of the Contract Work Hours and Safety Standards Act, 40 U.S.C. section 333, and applicable DOL regulations, "Safety and Health Regulations for Construction" 29 CFR Part 1926. Among other things, the Contractor agrees that it will not require any laborer or mechanic to work in unsanitary, hazardous, or dangerous surroundings or working conditions.

(ii) Subcontracts. The Contractor also agrees to include the requirements of this section in each subcontract. The term "subcontract" under this section is considered to refer to a person who agrees to perform any part of the labor or material requirements of a contract for construction, alteration or repair. A person who undertakes to perform a portion of a contract involving the furnishing of supplies or materials will be considered a

"subcontractor" under this section if the work in question involves the performance of construction work and is to be performed: (1) directly on or near the construction site, or (2) by the employer for the specific project on a customized basis. Thus, a supplier of materials which will become an integral part of the construction is a "subcontractor" if the supplier fabricates or assembles the goods or materials in question specifically for the construction project and the work involved may be said to be construction activity. If the goods or materials in question are ordinarily sold to other customers from regular inventory, the supplier is not a "subcontractor." The requirements of this section do not apply to contracts or subcontracts for the purchase of supplies or materials or articles normally available on the open market.

22. **Seismic Safety Requirements** 42 U.S.C. 7701 *et seq.*/49 CFR Part 41

The Agency agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in the U. S. Department of Transportation Seismic Safety Regulations 49 CFR Part 41 and will certify to compliance to the extent required by the regulation. The Agency also agrees to ensure that all work performed under this contract including work performed by a subcontractor is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project.

23. **Bonding Requirements**

Bid Bond Requirements (Construction). (a) Bid Security

A Bid Bond must be issued by a fully qualified surety company acceptable to the Department and listed as a company currently authorized under 31 CFR, Part 223 as possessing a Certificate of Authority as described thereunder.

(b) Rights Reserved

In submitting a Bid, it is understood and agreed by bidder that the right is reserved by the Agency to reject any and all bids, or part of any bid, and it is agreed that the Bid may not be withdrawn for a period of [ninety (90)] days subsequent to the opening of bids, without the written consent of the Agency.

It is also understood and agreed that if the undersigned bidder should withdraw any part or all of his bid within [ninety (90)] days after the bid opening without the written consent of the Agency, shall refuse or be unable to enter into this Contract, as provided above, or refuse or be unable to furnish adequate and acceptable Performance Bonds and Labor and Material Payments Bonds, as provided above, or refuse or be unable to furnish adequate and acceptable insurance, as provided above, he shall forfeit his bid security to the extent of the Agency's damages occasioned by such withdrawal, or refusal, or inability to enter into an agreement, or provide adequate security therefore.

It is further understood and agreed that to the extent the defaulting bidder's Bid Bond, Certified Check, Cashier's Check, Treasurer's Check, and/or Official Bank Check (excluding any income generated thereby which has been retained by the Agency as provided in [Item x "Bid Security" of the Instructions to Bidders]) shall prove inadequate to

fully recompense the Agency for the damages occasioned by default, then the undersigned bidder agrees to indemnify the Agency and pay to the Agency the difference between the bid security and the Department's total damages, so as to make the Agency whole.
The undersigned understands that any material alteration of any of the above or any of the material contained on this form, other than that requested, will render the bid unresponsive.

Performance and Payment Bonding Requirements (Construction)

The Agency shall require the Contractor to obtain performance and payment bonds as follows: (a) Performance bonds
1. The penal amount of performance bonds shall be 100 percent of the original contract price, unless the Agency determines that a lesser amount would be adequate for the protection of the Agency.
2. The Agency may require additional performance bond protection when a contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price. The Agency may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond. (b) Payment bonds
1. The penal amount of the payment bonds shall equal:
(I) Fifty percent of the contract price if the contract price is not more than $1 million.
(ii) Forty percent of the contract price if the contract price is more than $1 million but not more than $5 million; or
(iii) Two and one half million if the contract price is more than $5 million.
2. If the original contract price is $5 million or less, the Department may require additional protection as required by subparagraph 1 if the contract price is increased.

Performance and Payment Bonding Requirements (Non-Construction)

The Contractor may be required to obtain performance and payment bonds when necessary to protect the Agency's interest.
(a) The following situations may warrant a performance bond:
1. Agency property or funds are to be provided to the contractor for use in performing the contract or as partial compensation (as in retention of salvaged material).
2. A contractor sells assets to or merges with another concern, and the Agency, after recognizing the latter concern as the successor in interest, desires assurance that it is financially capable.
3. Substantial progress payments are made before delivery of end items starts.
4. Contracts are for dismantling, demolition, or removal of improvements.
(b) When it is determined that a performance bond is required, the Contractor shall be required to obtain performance bonds as follows:
1. The penal amount of performance bonds shall be 100 percent of the original contract price, unless the Agency determines that a lesser amount would be adequate for the protection of the Agency.
2. The Agency may require additional performance bond protection when a contract price is increased. The increase in protection shall generally equal 100 percent of the increase in

contract price. The Agency may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.
(c) A payment bond is required only when a performance bond is required, and if the use of payment bond is in the Agency's best interest.
(d) When it is determined that a payment bond is required , the Contractor shall be required to obtain payment bonds as follows:
1. The penal amount of payment bonds shall equal:
(i) Fifty percent of the contract price if the contract price is not more than $1 million;
(ii) Forty percent of the contract price if the contract price is more than $1 million but not more than $5 million; or
(iii) Two and one half million if the contract price is increased.

Advance Payment Bonding Requirements

The Agency may be required to obtain an advance payment bond if the contract contains an advance payment provision and performance bond is not furnished. The Agency shall determine the amount of the advance payment bond necessary to protect the Agency.

Patent Infringement Bonding Requirements (Patent Indemnity)

The Contractor may be required to obtain a patent indemnity bond if a performance bond is not furnished and the financial responsibility of the Contractor is unknown or doubtful. The Agency shall determine the amount of the patent indemnity to protect the Agency.

Warranty of the Work and Maintenance Bonds

1. The Contractor warrants to the Agency, the Architect and/or Engineer that all materials and equipment furnished under this Contract will be of highest quality and new unless otherwise specified by the Agency, free from faults and defects and in conformance with the contract documents. All work not so conforming to these standards shall be considered defective. If required by the [Agency], the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

2. The work furnished must be of first quality and the workmanship must be the best obtainable in the various trades. The work must be of safe, substantial and durable construction in all respects. The Contractor hereby guarantees the work against defective materials or faulty workmanship for a minimum period of one (1) year after Final Payment by the Agency and shall replace and repair any defective materials or equipment or faulty workmanship during he period of the guarantee at no cost to the Agency.

As additional security for these guarantees, the Contractor shall, prior to the release of Final Payment [as provided in Item X below], furnish separate Maintenance (or Guarantee) Bonds in form acceptable to the Agency written by the same corporate surety that the Performance Bond and Labor and Material Payment Bond for this Contract. These bonds shall secure the

Contractor's obligation to replace or repair defective materials and faulty workmanship for a minimum period of one (1) year after Final Payment and shall be written in an amount equal to ONE HUNDRED PERCENT (100%) of the CONTRACT SUM, as adjusted (if at all).

24. **Davis-Bacon Act** 40 USC § 276a-276a-5 (1995)/ 29 CFR § 5(1995)

(1) Minimum wages. (i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project),will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions s are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act o behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period.

Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed.

The wage determination and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iii) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, provided, that the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(iv)(A) The Contracting officer shall require that any class of laborers or mechanics which is not listed in wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefor only when the

following criteria have been met:
(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
(2) The classification is utilized in the area by the construction industry; and
(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.
(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (1)(iv) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(2) Withholding. The Agency shall upon its own action or upon written request of an authorized representative of the U.S. Department of Labor withhold or cause to be withheld from the contractor under this Contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act 1949 in the construction or development of the project), all or part of the wages required by the contract, the Agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records. (i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under

the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Agency for transmission to the Federal Transit Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be maintained under 29 CFR part 5 and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period had been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set for the in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (3)(i) of this section available for inspection, copying, or transcription by authorized

representatives of the Federal Transit Administration or the U.S. Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of fund. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and trainees--(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.
(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every

trainee must be paid at not less than the rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246 as amended, and 29 CFR part 30.

(5) Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the Federal Transit Administration may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor with all the contract clauses in 29 CFR 5.5.

(7) Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the U.S. Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility. (i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

25. Copeland Anti-Kickback Act 40 U.S.C. § 276c (1995)/ 29 CFR § 3 (1995)/ 29 CFR § 5 (1995)

The Contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

26. Procurement

To the extent applicable, the Recipient agrees to comply with the following third party procurement requirements:

a. Federal Standards. The Recipient agrees to comply with FTA Circular 4220.1E, "Third Party Contracting Requirements" any revision or replacement thereof, and applicable Federal regulations or requirements, including FTA third party contracting regulations when promulgated. The FTA Best Practices Procurement Manual provides additional procurement guidance. Be aware that the FTA Best Practices Procurement Manual is focused on procurement processes and may omit certain Federal requirements applicable to the work to be performed.

b. Project Approval/Third Party Contract Approval. Unless stated otherwise in writing, the Recipient agrees that approval of the Project does not constitute pre-approval of any non-competitive third party contract awards associated therewith.

c. Exclusionary or Discriminatory Specifications. Apart from inconsistent requirements imposed by Federal statute or regulations, the Recipient agrees to comply with the requirements of 49 U.S.C. §§ 5323(h)(2) by refraining from using any Federal assistance awarded by FTA to support procurements using exclusionary or discriminatory specifications.

d. Bus Seat Specifications. A State or local government recipient may use specifications conforming with the requirements of 49 U.S.C. §§ 5323(e) to acquire bus seats.

e. Preference for Recycled Products. To the extent practicable and economically feasible, the Recipient agrees to provide a competitive preference for products and services that conserve natural resources and protect the environment and are energy efficient. Examples of such products may include, but are not limited to, products described in U.S. Environmental Protection Agency (U.S. EPA) guidelines at 40 C.F.R. Parts 247-253, implementing section

6002 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §§ 6962.

f. Geographic Restrictions. The Recipient agrees to refrain from any using State or local geographic preference, except those expressly mandated or encouraged by Federal statute, such as those set forth in Subsection 15.i of this Master Agreement below, or as permitted by FTA.

g. Architectural, Engineering, Design, or Related Services. When procuring architectural, engineering, or related services, the Recipient agrees to comply with the provisions of 49 U.S.C. §§ 5325(b), either by negotiating for those services in the same manner as a contract for architectural and engineering services is negotiated under title IX of the Federal Property and Administrative Services Act of 1949, as amended, 40 U.S.C. §§§§ 541 *et seq.*, or by using an equivalent qualifications-based requirement of the State. Provided a sufficient number of qualified firms are eligible to compete for the third party contract, the contractor's geographic location may be a selection criterion. When awarding contracts for architectural, engineering, or related services, the Recipient agrees to accept undisputed audits conducted by other governmental agencies, consistent with the provisions of 23 U.S.C. §§ 112(b)(2) (C) through (F). To the extent a State has adopted or adopts by law formal procedures for procuring architectural, engineering, or related services, this Subsection 15.i. of this Master Agreement does not apply.

h. Award to Other than the Lowest Bidder. In accordance with 49 U.S.C. §§ 5325(c), a Recipient may award a third party contract to other than the lowest bidder, when such an award furthers objectives consistent with the purposes of 49 U.S.C. chapter 53 and any implementing regulations, circulars, manuals, or other guidance FTA may issue.

l. Rolling Stock. In acquiring rolling stock, the Recipient agrees as follows:

(1) Method of Acquisition. The Recipient may award a third party contract for rolling stock based on initial capital costs, performance, standardization, life cycle costs, and other factors, or based on a competitive procurement process, in accordance with 49 U.S.C. §§ 5326(c).

(2) Multi-year Options. A Recipient may procure rolling stock using financial assistance provided by 49 U.S. C. chapter 53 using a contract including an option to buy additional rolling stock or replacement parts for not more than 5 years after the date of the original contract, in accordance with 49 U.S.C. 5326(b)(1).

n. Notification of Federal Participation. In the announcement of any third party contract award for goods or services (including construction services) having an aggregate value of $500,000 or more, the Recipient agrees to specify the amount of Federal assistance to be used in financing that acquisition of goods and services and to express the amount of that Federal assistance as a percentage of the total cost of that third party contract.

o. Access to Third Party Contract Records. The Recipient agrees to require its third party contractors and third party subcontractors at as many tiers as required to provide the Secretary of Transportation and the Comptroller General of the United States, or their duly authorized representatives access to all third party records as they request for audits and inspections related to any third party contract not awarded on the basis of competitive

bidding for a capital or improvement project, as needed for compliance with 49 U.S.C. §§ 5325(a). The Recipient further agrees to require its third party contractors and third party subcontractors at as many tiers as required to provide sufficient access to third party procurement records as needed for compliance with Federal regulations or to assure proper project management as determined by FTA.

p. National Intelligent Transportation Systems Architecture and Standards. To the extent applicable, the Recipient agrees to conform to the National Intelligent Transportation Standards architecture in compliance with section 5206(e) of TEA-21, 23 U.S.C. §§ 502 note, and FHWA/FTA's "Transportation Equity Act for the 21st Century; Interim Guidance on Conformity with the National Intelligent Transportation Systems (ITS) Architecture and Standards," 63 Fed. Reg. 70443 *et seq*., December 21, 1998, and any other applicable subsequent Federal guidance.

q. Federal Supply Schedules. Only to the extent permitted by U.S. GSA, U.S. DOT, or FTA regulations or guidance may State, local, or nonprofit Recipients use Federal Supply Schedules in making third party acquisitions.

27. **Leases.**

a. Capital Leases. To the extent applicable, the Recipient agrees to comply with FTA regulations, "Capital Leases," 49 C.F.R. Part 639, and any revision thereto.

b. Leases Involving Certificates of Participation. The Recipient agrees to obtain FTA concurrence before entering into a leasing arrangement involving the issuance of certificates of participation in connection with the acquisition of any capital asset.

c. Cross-Border Leases. To the extent applicable, the Recipient agrees to comply with FTA Circular 7020.1, "Cross-Border Leasing Guidelines," April 26, 1990, in connection with the acquisition of capital assets involving a cross-border lease.

28. **Real Property.** For projects involving real property, the Recipient agrees as follows:

a. Land Acquisition. The Recipient agrees to comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, 42 U.S.C. §§§§ 4601 *et seq*.; and U.S. DOT regulations, "Uniform Relocation and Real Property Acquisition for Federal and Federally Assisted Programs," 49 C.F.R. Part 24. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

b. Covenant Assuring Nondiscrimination. The Recipient agrees to include a covenant in the title of the real property to assure nondiscrimination during the useful life of the project.

c. Recording Title to Real Property. To the extent required by FTA, the Recipient agrees to record the Federal interest in the title of real property.

d. FTA Approval of Changes in Real Property Ownership. The Recipient agrees that it will not dispose of, modify the use of, or change the terms of the real property title, or other interest in the site and facilities without permission and instructions from FTA.

29. **Construction**. For activities involving construction, the Recipient agrees as follows:

a. Drafting, Review, and Approval of Construction Plans and Specifications. To the extent required by FTA, the Recipient agrees to comply with FTA requests pertaining to the drafting, review and approval of construction plans and specifications.

b. Supervision of Construction. The Recipient agrees to provide and maintain competent and adequate engineering supervision at the construction site to ensure that the complete work conforms to the approved plans and specifications.

c. Construction Reports. The Recipient agrees to provide progress reports and such other information as may be required by FTA or the State.

d. Project Management for Major Capital Projects. The Recipient agrees to comply with FTA regulations, "Project Management Oversight," 49 C.F.R. Part 633, and any revision thereto, applicable to a Major Capital Project.